

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. G807060**

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| TINA MELIUS, Employee                       | CLAIMANT   |
| CHAPEL RIDGE NURSING CENTERS, LLC, Employer | RESPONDENT |
| AMTRUST NORTH AMERICA, Carrier              | RESPONDENT |

**OPINION FILED OCTOBER 18, 2022**

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MATTHEW J. KETCHAM, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On July 21, 2022, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on June 15, 2022, and an Amended Pre-hearing Order was filed on July 21, 2022. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The relationship of employee-employer-carrier existed between the parties on July 11, 2018.
3. The claimant sustained a compensable piriformis injury to the buttock and thigh on July 11, 2018.

4. The respondents have agreed to pay for all medical treatment from July 11, 2018, to April 16, 2019, regarding the compensable piriformis injury to the buttock and thigh.

5. The compensation rates are the maximum.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant is entitled to temporary partial disability benefits.
2. Whether Claimant's attorney is entitled to an attorney's fee.

The claimant's contentions are as follows:

“1. The above listed proposed stipulations.

2. The Claimant was injured on July 11, 2018, while assisting EMS personnel who were moving a patient from a bed to a gurney. The Claimant was grabbed by the patient while lowering the patient onto the gurney which caused the claimant to come up onto her right tiptoes. The Claimant felt a pop in her glute and a muscle spasm in her thigh and calf.

On July 11, 2018, the Claimant was instructed to see Dr. Keith Holder at Mercy Clinic Occupational Medicine with complaints of sharp pain in right glute. Dr. Holder diagnosed the claimant with strain of muscle, fascia and tendon of right hip. Dr. Holder also restricted the Claimant to light duty with a follow-up in seven (7) to ten (10) days as well as hip exercises and a cane to ambulate with.

On July 19, 2018, the Claimant returned to Dr. Holder for a follow-up where she stated that the pain is worse at night as well as with sitting. Dr. Holder kept the Claimant restricted to light duty and referred her to therapy.

The Claimant continued to follow-up with Dr. Holder who continued to refer the Claimant for therapy as well as her restriction to light duty.

On August 13, 2018, the Claimant attended physical therapy for strain of muscle, fascia and tendon of right hip where it is noted that she has decreased range of motion

and strength as well as gait and postural deficits. The Claimant was approved for six (6) visits.

On August 23, 2018, the Claimant was seen by Dr. Holder where he recommended the Claimant to finish therapy and that he would request an MRI of the Claimant's lumbar spine and right thigh which was denied.

On October 2, 2018, the Claimant once again seen by Dr. Holder where he referred the Claimant for steroid injection by pain management. Dr. Holder kept the Claimant on light duty.

On November 13, 2018, the Claimant was seen by dr. Brian Goodman for pain management where it he recommended the Claimant getting trigger point injection in the right gluteal muscle as well as stretching exercises and to follow-up in one (1) month.

The Claimant returned once more to Dr. Holder for a follow-up. However, any further treatment was denied by the Respondents. While the Claimant was going through the workers' compensation process, she continued to seek treatment using her own private health insurance.

On July 18, 2019, the Claimant present to Dr. Thomas Cheyne for continued right hip pain. Dr. Cheyne's diagnosed was chronic right hip pain, probable hamstring tendon injury. He recommended an MRI of right hip and pelvis as well as referred the Claimant for physical therapy.

The Claimant had an MRI completed which was normal. However, Dr. Cheyne referred the Claimant for a second opinion to try to locate the source of the pain. In the meantime, the Claimant continued to attend physical therapy for a right hamstring injury.

On August 12, 2019, the Claimant was seen by Dr. Greg Jones for a second opinion. Dr. Jones notes the Claimant's radicular pain symptoms down the right leg. Dr. Jones states that he believes that the Claimant has suffered a low back injury and has requested a lumbar MRI.

The Claimant returns to Dr. Jones post-MRI on September 4, 2019, and it was found that the Claimant has lumbar stenosis, facet hypertrophy and degenerative disc changes at L4-5 and L5-S1 disc protrusion. Dr. Jones changed the Claimant's physical therapy to focus on the Claimant's

lumbar spine but that she is to continue on light duty work restrictions.

The Claimant continued with physical therapy treatment.

On November 23, 2021, the Claimant returned to Dr. Cheyne for continued pain where Dr. Cheyne opined his opinion that they right glute pain comes from the Claimant's low back and referred the Claimant for additional trigger point injections.

3. Claimant reserves the right to supplement and amend her contentions after additional discovery has been completed.”

The respondents' contentions are as follows:

“Respondents contend that the Claimant did have a piriformis injury that the Court of Appeals said was in the right buttocks. The Claimant apparently is now having problems in the low back, which was not litigated at the prior hearing and is not subject to this remand.

Respondents have paid the medical bills that were subject of the initial hearing related to the piriformis syndrome. A copy of the payment history is attached.

The Claimant has not outlined what medical are outstanding nor have any medical bills been submitted.

Claimant is also contending that she is entitled to temporary total disability benefits. However, the Claimant did not lose any time from work, but did make a claim for temporary partial disability. It is possible that issue will need to be litigated, though it is unclear what benefits and time frame the Claimant is asking for benefits.

The Claimant has not provided any off work slips. In addition, she voluntarily quit working for the Respondent-Employer and went to work for another facility. Therefore, Respondents are unaware of any missed time.

Next, the Claimant went from 2019 to 2021 with no medical treatment. It is Respondents position that the healing period has long since ended.

Claimant has also requested permanent partial disability and wage loss. Respondents are unaware of any impairment rating being assigned for the piriformis syndrome.”

The claimant in this matter is a 52-year-old female who at a hearing before the Workers Compensation Commission on April 16, 2019, brought a claim for benefits before an administrative law judge of the Workers Compensation Commission. Following were the stipulations and issues under consideration:

Stipulations:

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. The employee/employer/carrier relationship existed on July 11, 2018.
3. The respondents have controverted the claim in its entirety.
4. The compensation rates are at the maximum and the average weekly wage is \$1,469.00.

Issues:

1. Whether claimant suffered a compensable injury to her buttocks and thigh on July 11, 2018.
2. Whether claimant is entitled to medical treatment.
3. Whether claimant is entitled to temporary partial disability benefits, from date of injury to date yet to be determined.
4. Attorney fees.

On June 25, 2019, that administrative law judge issued an opinion and found the following Findings of Fact and Conclusions of Law:

1. The claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her right buttock and thigh on July 11, 2018. She has failed to provide evidence in the form of objective medical findings

to support her contention that she suffered spasms related to the July 11, 2018, incident and alleged injury.

2. The claimant is not entitled to temporary partial disability or medical benefits.

3. The claimant's attorney is not entitled to an attorney fee based on the above findings.

That opinion was appealed to the Full Arkansas Workers' Compensation Commission and on December 19, 2019, that opinion was affirmed and adopted by the Full Arkansas Workers' Compensation Commission.

The Full Commission's opinion was appealed to the Arkansas Court of Appeals who reversed and remanded the case back to the Full Arkansas Workers' Compensation Commission on February 10, 2021. Following is a portion of that decision:

“Accordingly, we hold that a reasonable inference from the chronology of events is that the medications, physical therapy, and pain management were prescribed to aid Melius and to treat her injury, and there was no evidence introduced to the contrary. Any other construction of these events does not withstand scrutiny or pass the test of reasonableness. *See Jefferson*, 361 Ark. at 265, 206 S.W.3d at 243. Fair-minded persons with the same facts before them could not have reached the conclusions that the Commission did. The medical evidence presented by Melius did contain objective medical findings in the form of the observations of the doctors as to the noted tenderness, the prescribed treatment for muscle spasms in the form of medication, physical therapy, and pain management. Other determinations regarding the compensability of the injury were not addressed upon the finding that Melius did not present objective medical findings. Therefore, we reinstate Melius's case and remand for further determinations of whether she suffered a compensable injury to her buttock and thigh on July 11, 2018, whether she is entitled to medical treatment, and whether she is entitled to temporary partial-disability benefits.”

The Full Commission then again received the case and issued an opinion on September 28, 2021, in which it remanded the case back to the administrative law judge level. The initial administrative law judge who decided the case was no longer an employee of the Commission, so the case was randomly assigned by the Clerk of the Commission to a different judge in the appropriate district. Following is a portion of the Full Commission’s September 28, 2021, remand to the administrative law judge level:

“Having found proof by a preponderance of the evidence of a compensable injury as documented by the Court of Appeals, the Commission remands this case to the administrative law judge for other determinations regarding the compensability for the injury which was not addressed previously by the administrative law judge. Specifically, the administrative law judge shall make further determinations of whether claimant suffered a compensable injury to her buttock and thigh on July 11, 2018, and to what extent claimant is entitled to medical treatment and temporary partial disability benefits. Therefore, this case is remanded to the administrative law judge for proceedings consistent with this order and the mandate from the Court of Appeals.”

On June 15, 2022, a prehearing conference was conducted. At that time the parties agreed to resolve the issues of compensability and medical treatment to the date of the original April 16, 2019, hearing. The only issues that remain at this time are the claimant’s entitlement to temporary partial disability and whether the claimant’s attorney is entitled to an attorney’s fee for that benefit.

It is now certain that the claimant sustained a compensable piriformis injury to the buttock and thigh on July 11, 2018. Medical records introduced into evidence showed that the claimant was placed on light duty due to this injury. The claimant gave credible testimony in the hearing before this administrative law judge on July 21, 2022, in which she stated:

“When I got hurt, they said I could only do eight hours a day, which means I had to do both jobs, I just had to work them in. So I did medical records the majority of the time and then on heavy treatment days, things like that, I had to spend more hours on the treatment side of it than on the admissions’ and records’ side of it. And then if I was on call, then I had to focus on whatever departments needed me first and foremost.”

It was the claimant’s testimony that prior to her injury she had worked essentially two jobs that were combined into one in that she was performing work in both medical records and performing treatment on patients. This dual role caused her to work overtime, which given her credible testimony, was cut off at the time of her injury due to her light duty status.

In testimony at both the original hearing and the present hearing before the Commission, the claimant indicated that she was not happy with her dual role of medical records and patient treatment. The claimant had expressed to Rachel Wertheimer, her supervisor, that she did not like her current role and was eventually removed from that position and placed in another position. Following is a portion of the claimant’s cross examination testimony from her July 21, 2022, hearing:

Q Okay. And then you expressed to Rachel that you did not like that job?

A Yes, sir.

Q All right. So then my next question was, “So that was not really the position you wanted.” And then Rachel Wertheimer,” and I will spell the name for you, W-e-r-t-h-e-i-m-e-r, “she came to you and indicated that she had a different job opening, is that correct?”

And your answer was, “Yes.”

And then I said, “And that was a job that you were interested in and you took it?”



You answered, “She offered me back my old job.”

Okay. So you knew what the job entailed?

A Yes, sir.

Q So that was actually the job you wanted; wasn’t it?

A It was a job I had done for 12 years.

Q Okay. That is not what I asked.

A Yes. They asked me to take that job back because they could not keep a treatment nurse.

THE COURT: Could you give me a reference page on the original transcript, please.

MR. FRYE: It’s 44 and 45.

THE COURT: Thank you

THE WITNESS: And because they couldn’t keep a treatment nurse, I had to continue to do the job because I was the only one certified to do it.

Q [BY MR. FRYE]: And the medical records’ job they moved you to, when did that happen? Was that December?

A Okay. I don’t think anybody is understanding. I never left either job. I was the medical records’ person when they made me do the treatments, but they couldn’t keep people employed so I was still doing both jobs. But I was designed as a treatment nurse, still doing both jobs because I was a supervisor and was over the nursing staff, so I was required to do whatever they told me to do.

So my job title was one thing, but what they had me doing was completely different because it falls under a supervisory role.

So I went back to what you would call my original job description of medical records, admissions, that job. I

was still doing the other job because they didn't have somebody.

Q And I appreciate it. All I asked was when?

A Well, I never switched jobs. It just switched on the paperwork.

Q Right.

A I can't give you a date because if Rachel walks in and says, hey, we are going to have this admission tomorrow and she has all these wounds. I need you to coordinate your hours around that because you are going to be on the floor doing that tomorrow.

Q Okay.

A So it's hard for me under oath to give you this is a cut and dry. It's not. I was a jack of all trades and a master of none, basically. I did it all based on what they told me and they agreed to that in the original testimonies.

The claimant apparently switched job titles but was still working both jobs in some capacity. However, during this time-period, before the switch, she was not allowed to work overtime due to her light duty status. After the job switch, the claimant was again working overtime hours. Following is a portion of her July 21, 2022, testimony on cross examination:

Q So from July to December, how much overtime – you weren't working any overtime?

A I believe it was December. I don't know the exact date. I just don't.

Q All right. But after December, they said that you must work overtime?

A At some point during that time frame, they said I had to work overtime.

Q Okay. So the restrictions of any overtime would have ended at that point at the very least?

A Yes.

In the testimony given by the claimant during the July 21, 2022 hearing, the claimant testified that she believed her job switch-over occurred in December of 2018. The claimant made clear in her testimony that she was not certain of that date. In testimony from the April 16, 2019 hearing, the claimant's supervisor, Rachel Wertheimer, testified that the claimant started that new position in September of 2018. I note that no employment or wages records were introduced by the parties in this matter during the relevant time frame between September of 2018 and December of 2018, which would greatly aid in the actual determination of the start date for the claimant's new position. Common sense would indicate that the respondent employer should readily have access to such documentation. The claimant has asked the Commission to determine her entitlement to temporary partial disability. I find from the evidence before the Commission that the claimant was in her healing period and had a decrease in her ability to earn wages due to her compensable injury causing an inability to work overtime hours beginning July 12, 2018, extending to the date she began her new position with the respondents sometime between September of 2018 and December of 2018. As such, the respondents shall pay to the claimant sixty-six and two-thirds percent (66-2/3%) of the difference between her average weekly wage, which was the maximum average weekly wage available on July 11, 2018, and the actual wages the claimant earned from July 12, 2018, until she began her new position sometime between September of 2018 and December of 2018.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of

the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 15, 2022, and contained in a Pre-hearing Order filed July 21, 2022, are hereby accepted as fact.

2. That the claimant has proven by a preponderance of the evidence that she is entitled to temporary partial disability benefits from July 12, 2018, until she began her new position with the respondents sometime between September of 2018 and December of 2018.

3. That the claimant has proven by a preponderance of the evidence her attorney is entitled to attorney's fee in this matter.

**ORDER**

That the respondents shall pay the claimant temporary partial disability benefits beginning July 12, 2018, extending to the date that she began her new position with the respondents sometime between September of 2018 and December of 2018. Those benefits should be paid an amount of sixty-six and two-thirds percent (66-2/3%) of the difference between her average weekly wage, which was the maximum available on July 11, 2018, and the actual wages the claimant earned during that time-period.

Respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits pursuant to Ark. Code Ann. §11-9-715.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

**IT IS SO ORDERED.**

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**HONORABLE ERIC PAUL WELLS  
ADMINISTRATIVE LAW JUDGE**